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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.S. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARSON M.,

Defendant and Appellant.

D061036

(Super. Ct. No. NJ14488A)

APPEAL from orders of the Superior Court of San Diego County, Blaine K.

Bowman, Judge. Affirmed.

Carson M. appeals a juvenile court order denying his request for presumed father status as to his minor stepdaughter, A.S. He contends he established he was A.S.'s presumed father within the meaning of Family Code section 7611, subdivision (d)¹

¹ Statutory references are to the Family Code unless otherwise specified.

because he received A.S. into his home and openly held her out as his daughter. Carson also appeals an order denying his request for unsupervised visits with his minor son, D.M., contending there was no substantial evidence to support the court's finding visits should continue to be supervised. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

A.S. was born to Sara M. and K.B.² in January 2010, but lived with the maternal grandparents in South Dakota for the first 14 months of her life. Sara married Carson in March 2011, and A.S. came to live with them. D.M. was born in June 2011, and remained in the hospital due to problems caused by his premature birth.

In July 2011, Sara and Carson brought 18-month-old A.S. to the hospital because she had blood in her stool, she had a fever and had been vomiting for two weeks, and she was not eating and had recently lost weight. Sara and Carson were told A.S. had a potentially life-threatening condition that required intravenous fluids, but they became hostile and argumentative with medical staff and refused to allow treatment. Carson said, several times, that A.S. could "go home and die." He could not control his anger, threatened and intimidated one of the doctors and said he would "kill CPS" if anyone came near A.S. Carson often used profanity directed at A.S. and told her to "[s]hut the fuck up." The social worker was frightened by Carson.

A.S. received a diagnosis of failure to thrive, and Sara admitted having withheld food from her. Doctors also discovered A.S. had multiple bruises that appeared to be

² Neither Sara nor K.B. is a party to this appeal.

nonaccidentally inflicted. Sara and Carson could not adequately explain these injuries, other than to say A.S. is clumsy and falls often.

The San Diego County Health and Human Services Agency (Agency) filed petitions in the juvenile court on behalf of A.S. (Welf. & Inst. Code, § 300, subd. (b)) and D.M. (Welf. & Inst. Code, § 300, subd. (j)). The court detained A.S. in out-of-home care and ordered D.M. detained in out-of-home care once he was discharged from the hospital.

Sara named K.B. as A.S.'s biological father, but said he had never been involved in his daughter's life. A parent search for K.B. was pending.

A.S. was living in a foster home, where she was doing well and gaining weight. D.M. was also living in this foster home following his discharge from the hospital. During visits with the children, Carson was unable to control his temper and continued to have angry outbursts. He admitted having anger problems since he was a child and claimed people were out to get him. A.S. appeared fearful of Carson. She did not want him to touch her or be near her. The foster mother reported that after every visit with Carson and Sara, A.S. appeared despondent, had temper tantrums, cried, was difficult to console and stored food in her cheeks after dinner. During diaper changes, A.S. put her finger in her vagina and said "dada."

At the jurisdiction hearing, the court sustained the allegations of the petitions as to both A.S. and D.M. and set a disposition hearing. In the meantime, K.B. contacted Agency and indicated there was a paternity test confirming he was A.S.'s biological father. K.B. had never met A.S. and expressed his regret that he had not been involved in her life. He said he was willing to do whatever was necessary to get custody of her. K.B.

appeared at the disposition hearing and the court appointed counsel for him. Carson filed a parentage inquiry, seeking presumed father status as to A.S. under section 7611, subdivision (d). He alleged A.S. had lived with him from February to July 2011, he told everyone he was her father and he was supporting her financially and emotionally.

K.B. moved to a larger home, purchased items for A.S. and enrolled in a parenting education course. His first visit with A.S. went well. A.S. showed no fear of him, and they were developing a relationship. In contrast, A.S. had difficulty during and after visits with Sara and Carson. Carson continued to have angry outbursts. Sara, the paternal grandmother and the social worker were afraid of him. He threatened to harm K.B. and the foster parents. A.S. was terrified of Carson. The court ordered Carson to have no contact with either A.S. or K.B.

Paternity tests confirmed K.B. was A.S.'s biological father. A.S. was excited to see K.B. and their visits continued to go well. A.S. no longer had behavior problems when she stopped visiting Carson.

At the contested paternity hearing, the court declared K.B. to be A.S.'s biological father. The court then considered evidence of Carson's paternity status as to A.S. Sara testified A.S. came to live with her and Carson around the time they got married. Carson was then on active duty in the Marine Corps, and added A.S. to his medical and dental insurance coverage. He helped A.S. get to her medical appointments. Carson told Sara he held out A.S. as his daughter to almost everyone he spoke to, including his entire Marine Corps command. He referred to himself as A.S.'s dad, and A.S. called him "dada." Carson contributed to the rent, and paid for groceries and A.S.'s diapers.

After considering the evidence and arguments of counsel, the court found Carson had not met his burden of showing he was A.S.'s presumed father within the meaning of section 7611, subdivision (d). Specifically, the court found, by clear and convincing evidence, the presumption did not apply because Carson's behavior toward A.S. was antithetical to the role of a parent. Alternatively, the court found even if Carson qualified as a presumed father, considerations of policy and logic weighed in favor of K.B.'s paternity.

The court continued the disposition hearing. Just before the matter was called, Carson was in a scuffle in the courthouse hallway, requiring deputy sheriffs to subdue and arrest him.

Sara reported Carson was presently confined to barracks for a few more weeks because of his conduct in the courthouse at the last hearing. She planned to remain in a relationship with Carson even if it interfered with reunification because he provided her with the emotional support she needed as a result of her posttraumatic stress disorder. Although Carson was participating in therapy, it had not been effective in controlling his angry outbursts. Sara and Carson continued to minimize and deny that they hurt A.S.

At the continued hearing, social worker Minnie Balagtas testified K.B. had consistently visited A.S. twice a week for the past three months. He was having unsupervised and overnight visits. He inquired about her care, and moved into a larger home so A.S. could have her own bedroom. Visits between A.S. and K.B. went extremely well. Based on Balagtas's own observation of the interaction between A.S. and

K.B., as well as input from A.S.'s therapist and foster parents, Balagtas recommended the court place A.S. with K.B.

After considering the evidence and arguments of counsel, the court declared A.S. and D.M. dependents, removed A.S.'s custody from Sara and removed D.M.'s custody from Sara and Carson. Finding no detriment to A.S., the court placed her with K.B. The court placed D.M. in foster care, ordered reunification services for Sara and Carson and ordered visits to be supervised. The court gave Agency discretion to expand visitation to include unsupervised, weekend and overnight visits with the concurrence of D.M.'s counsel.

DISCUSSION

I

Carson contends the court erred by denying his request for presumed father status as to A.S. He asserts he adequately showed he was deserving of presumed father status within the meaning of section 7611, subdivision (d) because he received A.S. into his home and openly held her out as his child.

A

The extent to which a father may participate in dependency proceedings, and a father's rights in those proceedings, depend on his parentage status. (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) Only presumed fathers are entitled to all the rights afforded to parents, including the appointment of counsel, reunification services and custody (absent a finding of detriment). (Welf. & Inst. Code, §§ 317, subd. (b), 361.2, subd. (a), 361.5, subd. (a); *In re Zacharia D.* (1993) 6 Cal.4th 435, 448; *In re T.R.*, at

p. 1209.) A presumed father is defined exclusively under the provisions of the Uniform Parentage Act of 1973 (§ 7600 et seq.).

Paternity presumptions are driven not by biology, "but by the state's interest in the welfare of the child and the integrity of the family." (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1209; *In re Nicholas H.* (2002) 28 Cal.4th 56, 65.) In the context of dependency proceedings, a presumed father is one who promptly comes forward and shows a full commitment to his parental responsibilities—emotional, financial and otherwise. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802; see also *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849.) "The presumed father's commitment to the child is a key consideration." (*In re T.R.*, at p. 1210.)

As relevant here, a man may achieve presumed father status when he "receives the child into his home and openly holds out the child as his natural child." (§ 7611, subd. (d).) In determining whether this provision applies, the court considers factors such as whether the man promptly took legal action to obtain custody of the child; whether and how long he cared for the child; whether there is unequivocal evidence he acknowledged the child as his and to what extent he did so; and whether his care of the child was merely incidental. (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1211.) The criteria for achieving presumed father status, however, cannot be viewed in a vacuum. (*Ibid.*) Thus, even a man who receives a child into his home and holds the child out as his own will not necessarily qualify as a presumed father if he has acted in a manner incompatible with parenthood. (*Ibid.*)

A man seeking presumed father status has the burden of establishing the foundational facts by a preponderance of the evidence. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1652.) We review the court's determination for substantial evidence. (*Id.* at pp. 1650, 1653; *In re J.H.* (2011) 198 Cal.App.4th 635, 646.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 599-600; *In re Spencer W.*, at p. 1650.) On appeal, the appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the evidence showed Carson received 14-month-old A.S. into his home after he married Sara, but he did not take legal action to obtain custody of her until these dependency proceedings began. Although Carson financially supported A.S. and held her out as his daughter, in every other respect he showed a total disregard for A.S.'s well-being. During the four months A.S. lived with Carson, she was the victim of physical abuse and neglect. She required hospitalization for a potentially life-threatening condition, attributable, in part, to inadequate nutrition at home. Carson refused to cooperate with medical professionals, opting to have A.S. "go home and die," an attitude entirely uncharacteristic of a committed or nurturing parent. Contrary to Carson's

argument, he did not provide A.S. with security or try to ensure her needs were met. Further, A.S.'s multiple bruises were consistent with inflicted trauma. Given Carson's inability to control his temper, and A.S.'s abject fear of him, a reasonable inference could be drawn that Carson had caused these injuries and, thus, engaged in conduct antithetical to a parent's role.

Moreover, there was absolutely no evidence of any positive parenting by Carson. Instead, he was emotionally abusive toward A.S. and treated her with contempt. He often became angry and frustrated, using profanity and raising his voice, which caused A.S. to become terrified of him. Carson's interactions with A.S. were so inappropriate that the court issued a no-contact order. His conduct was not simply "[unwise]" and "[unreasonable]," as he claims; it was a blatant violation of his parental responsibilities.

Because Carson showed no commitment to A.S.'s welfare, he does not belong to the preferred class of fathers that the Legislature intended to benefit because these fathers established a positive familial bond. "If an individual can qualify for presumed father status based on his good deeds consistent with parental responsibilities, it follows that under certain circumstances he can be disqualified by repugnant conduct that is detrimental to the child." (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1212.) Substantial evidence supports the court's finding Carson's conduct, which was inimical to A.S.'s welfare, defeated his entitlement to presumed father status.³

³ Because the court properly found Carson was not entitled to presumed father status, we need not address the propriety of the court's alternative finding the presumption of paternity was rebutted in favor of K.B.'s paternity.

II

Carson contends the court abused its discretion by ordering supervised visits with D.M. Carson asserts he had a bond with D.M., their interactions were positive and appropriate and he was ready for unsupervised visits.

A

The juvenile court defines a parent's visitation rights by balancing the parent's interests in visitation with the child's best interests. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757; Welf. & Inst. Code, §§ 362.1, subd. (a)(1)(A) ["Visitation shall be as frequent as possible, consistent with the well-being of the child."], 366.21.) Restrictions on parental visitation are proper if they are consistent with the child's best interests under the particular circumstances of the case. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009; *In re Clara B.* (1993) 20 Cal.App.4th 988, 999.)

The court has broad discretion in making visitation orders, which we review for abuse of discretion. (*In re Lee G.* (1991) 1 Cal.App.4th 17, 26-27; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-51.) In this regard, the juvenile court's order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.)

B

Here, the evidence showed Carson had a very serious anger management problem. He intimidated and threatened medical professionals, the social worker, the foster parents, the maternal grandparents and K.B. A.S. was terrified of Carson, necessitating a no-contact order. Carson continued to deny responsibility for A.S.'s injuries. His participation in therapy had not been effective in controlling his angry outbursts, and he was recently arrested following a scuffle in the courthouse hallway. Although Carson's interaction with D.M. during supervised visits had been generally appropriate, the court found visitation should remain supervised until Carson progressed with the requirements of his case plan, including participating in a psychological evaluation and individual therapy. Having considered D.M.'s best interests, the court acted well within its broad discretion by requiring supervised visits between D.M. and Carson. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 203; *In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1009.)

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

McINTYRE, Acting P. J.

IRION, J.